

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CIPRIANO RAMIREZ *et al.*, ) Civil No. 09cv1931-L(POR)  
Plaintiffs, )  
v. ) **ORDER DISMISSING ACTION AND  
SCME MORTGAGE BANKERS, INC. *et* )  
*al.*, )  
Defendants. )  
)**

In this mortgage foreclosure action, Defendant Aurora Loan Services, LLC (“Aurora”) filed a motion to dismiss due to Plaintiffs’ failure to file an amended complaint and a motion to expunge the notice of *lis pendens*. Plaintiffs did not file an opposition to either motion. For the reasons which follow, Aurora’s motions are **GRANTED**.

Previously, Aurora had moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and to expunge the notice of *lis pendens*. The motion to dismiss was granted. (Docket no. 9.) The complaint was dismissed in part with prejudice and in part with leave to amend. The motion to expunge was denied without prejudice. Plaintiffs neither timely filed an amended complaint nor a notice of intent not to file an amended complaint. Accordingly, the complaint is **DISMISSED WITH PREJUDICE** as to Aurora. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) (dismissal pursuant to Federal Rule of Civil Procedure 41(b)).

////

In addition to Aurora, Plaintiffs named SCME Mortgage Brokers, Inc. (“SCME”), GMAC Mortgage (“GMAC”) and Cal-Western Reconveyance Corporation (“Cal-Western”) as Defendants. Cal-Western, as the foreclosure trustee, filed a declaration of nonmonetary status pursuant to California Civil Code Section 2924l. (Docket no. 7.) It agreed to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust. Cal. Civ. Code § 2924l(b). No party has timely objected to Cal-Western’s declaration. *See id.* § 2924l(c)-(e). Accordingly, the complaint is **DISMISSED WITH PREJUDICE** as to Cal-Western.

None of the remaining Defendants have been served with process.<sup>1</sup> As to GMAC, Plaintiffs filed a document erroneously styled as a Certificate of Service. (*See* docket no. 4.) The document indicates that Plaintiffs sent a request for waiver of service of summons. *See* Fed. R. Civ. Proc. 4(d). Nothing in the record indicates that GMAC signed the waiver. Plaintiffs did not file a certificate of service indicating that they subsequently attempted to serve GMAC with the summons and the complaint. Nothing in the record indicates that Plaintiffs attempted to obtain a waiver from or serve SCME in any manner at all. No proof of service of summons and the complaint has been filed as to these Defendants. *See id.* 4(l) (requiring the filing of a proof of service). The complaint was filed on September 3, 2009; accordingly, the time to serve has long passed. *See id.* 4(m) (120 days after the complaint is filed). Based on the foregoing, the complaint is **DISMISSED WITHOUT PREJUDICE** as to the remaining Defendants.

Simultaneously with filing the complaint, Plaintiffs recorded a Notice of Pendency of Action referencing the instant action with respect to their real property. (Request for Judicial Notice Ex. A & docket no. 2.) “[T]he court shall order the notice expunged if the court finds that the pleading on which the notice is based does not contain a real property claim.” Cal. Code Civ. Proc. § 405.31; *see also Id.* § 405.5 & 28 U.S.C. § 1964 (state law *lis pendens* provisions apply in federal court). This action has been dismissed. Accordingly, no real property claims remain in this action. Aurora’s motion to expunge *lis pendens* is therefore **GRANTED**.

---

<sup>1</sup> While it appears that Cal-Western also was not properly served, it has waived any objection to the service of process by filing the declaration of nonmonetary status. *See* Fed. R. Civ. Proc. 12(h).

1       Based on the foregoing, Aurora's motions to dismiss and expunge the notice of *lis  
2 pendens* are **GRANTED**. The action is **DISMISSED WITH PREJUDICE** as to Defendants  
3 Aurora Loan Services, LLC and Cal-Western Reconveyance Corporation pursuant to Rule 41(b).  
4 The action is **DISMISSED WITHOUT PREJUDICE** as to the remaining Defendants pursuant  
5 to Rule 4(m). Plaintiffs' notice of *lis pendens* is **EXPUNGED**.

6       **IT IS SO ORDERED.**

7  
8 DATED: January 3, 2011

9  
10   
11 M. James Lorenz  
12 United States District Court Judge

13 COPY TO:

14 HON. LOUISA S. PORTER  
15 UNITED STATES MAGISTRATE JUDGE

16 ALL PARTIES/COUNSEL

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28